



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 9, 2005

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2005-03987

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223625.

The Texas Department of Transportation (the "department") received a request for information related to a specified audit. You claim that some of the requested information is excepted from disclosure under sections 552.116 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the information submitted as Exhibit B is excepted from disclosure under section 552.116 of the Government Code. Section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency . . . is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that the information in Exhibit B relates to an audit authorized by state law and performed by an internal auditor of the department. *See* Gov't Code §§ 321.0134, 2102.007. You further state that Exhibit B was compiled during the course of a formal audit by the department's internal auditor. Based on your representations, we conclude that Exhibit B constitutes audit working papers under section 552.116(b)(2) and is therefore excepted from disclosure under section 552.116 of the Government Code.<sup>1</sup>

We next address your claim of section 552.130 of the Government Code for portions of the information submitted as Exhibit C. Section 552.130 excepts from disclosure "information [that] relates to. . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We have marked the Texas motor vehicle record information in Exhibit C that the department must withhold under section 552.130 of the Government Code. We note that the requestor has a special right of access under section 552.023 of the Government Code to his own license plate numbers. *See* Gov't Code § 552.023.

Exhibit C also includes information that may be subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117 excepts from disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. If the employees at issue timely elected to keep the information we have marked confidential, the department must withhold this information under section 552.117 of the Government Code. The department may not withhold the

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<sup>1</sup>Because we are able to reach this conclusion, we need not consider your section 552.130 claim against disclosure for this information.

<sup>2</sup>This office will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

marked information under section 552.117 of the Government Code if the employees at issue did not make a timely election to keep the information confidential.

In summary, Exhibit B may be withheld under section 552.116 of the Government Code. The Texas motor vehicle record information we have marked in Exhibit C must be withheld under section 552.130 of the Government Code. If the employees at issue made a timely election under section 552.024 of the Government Code to keep the information we have marked in Exhibit C confidential, this information must be withheld under section 552.117 of the Government Code. The remaining information must be released to the requestor.<sup>3</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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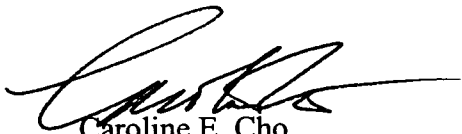
<sup>3</sup> We note that the submitted information contains confidential information that is not subject to release to the general public. *See* Gov't Code § 552.352. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek a ruling from this office.

body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 223625

Enc. Submitted documents

c: Mr. Harry L. Vaughn  
117 Meadow Wood Drive  
Kyle, Texas 78640  
(w/o enclosures)